

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of Section 255 of)
the Telecommunications Act of 1996)

Access to Telecommunications Services,)
Telecommunications Equipment, and)
Customer Premises Equipment)
By Persons With Disabilities)

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WT Docket No. 96-198

BELLSOUTH COMMENTS

BellSouth Corporation, on behalf of its affiliated companies and by counsel, respectfully submits these Comments in response to the Notice of Inquiry¹ in the above referenced proceeding.

With the NOI, the Commission begins fulfillment of its responsibility under Section 255 of the Communications Act² to support the Architectural and Transportation Barriers Compliance Board's ("ATBCB") development of "guidelines for accessibility of telecommunications equipment and customer premises equipment"³ by individuals with disabilities. In addition, the Commission inquires as to the need for its own adoption of guidelines or rules to govern carriers' and equipment providers' compliance with their responsibilities under Section 255. While BellSouth recognizes the beneficial role the Commission can play in development of ATBCB's

¹ Notice of Inquiry, WT Docket No. 96-198, FCC 96-382 (Sept. 19, 1996) ("NOI").

² 47 U.S.C. § 255.

³ 47 U.S.C. § 255(d).

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guidelines, BellSouth urges the Commission to exercise restraint with respect to development of rules or guidelines outside of that process.

The Telecommunications Act of 1996⁴ was enacted to eliminate unwarranted judicial, legislative, and regulatory influences on the development of a fully competitive telecommunications marketplace. Proper implementation of the Act promises to promote innovation and increased consumer choice. In particular, Section 255 offers promise to the millions of individuals with disabilities living in America that they, too, will share in the benefits of such innovation. Indeed, it is the purpose of this section to “foster the design, development, and inclusion of new features in communications technologies that permit more accessibility of communications technology by individuals with disabilities.”⁵

To that end, Section 255 imposes on manufacturers the duty to design and manufacture equipment to be accessible to and usable by individuals with disabilities, if readily achievable. Similarly, providers of telecommunications services are charged with ensuring that their services are accessible to and usable by individuals with disabilities, if readily achievable. When these standards cannot be attained, manufacturers and service providers must make their equipment or services compatible with existing devices commonly used by individual with disabilities, if readily achievable. In imposing these obligations, Section 255 borrows goals, standards, and terminology from the Americans with Disabilities Act of 1990 (“ADA”).

Also much like certain provisions of the ADA, Section 255 vests ATBCB with primary responsibility for developing guidelines for equipment accessibility. Clearly acknowledging the

⁴ Pub. L. 104-104, 110 Stat. 56 (1996) (“the 1996 Act” or “the Act”).

⁵ S. Rep. No. 230, 104th Cong., 1st Sess. 52 (1995).

Commission's expertise, however, the Act directs ATBCB to develop its guidelines in conjunction with the Commission. BellSouth concurs that the Commission's insights and understanding of both communications technologies and the marketplace will be vitally important to ATBCB as it develops guidelines. Indeed, the NOI already demonstrates the range of issues the Commission might identify that may have bearing on ATBCB's objective. The Commission can also support ATBCB through use of its procedures (like the instant NOI) to gather information useful to ATBCB as ATBCB develops its initial guidelines and as it periodically reviews and updates them.

Insofar as the Act vests ATBCB with primary responsibility for developing equipment guidelines, however, BellSouth urges the Commission to be cautious not to overstep its advisory capacity. Thus, BellSouth encourages the Commission to avoid any action that would effectively usurp ATBCB's responsibilities. In particular, the Commission should refrain from adopting rules that might conflict with ATBCB's guidelines.

Similarly, the Commission should not attempt to devise specific rules even where the Act does not grant authority for establishing guidelines to ATBCB. The structure and history of Section 255 confirm that Congress anticipated that Section 255 would be self-executing and not needing of detailed implementation regulations. Nor is there a need for such regulation.

First, Section 255 is derived from Section 308(a) of the underlying Senate Bill 652, which would have added a new section 262 to the Communications Act.⁶ Proposed section 262(g) would have directed the Commission to "prescribe regulations to implement this section."⁷ As the

⁶ See, H.R. Conf. Rep. No. 458, 104th Cong. 2d Sess. 135 (1996).

⁷ S. Rep. No. 230, 104th Cong., 1st Sess. 109 (1995).

Conference Report indicates, however, this provision was deliberately omitted from Section 255.⁸

Thus, Congress has indicated its clear view that implementing regulations are not necessary for this Section.

Moreover, even if the Commission retains general rulemaking authority, there is no need to exercise it at this time. Rather than attempting to articulate specific requirements that govern multiple technologies, carriers, and manufacturers and that may vary substantially with the nature of individuals' different disabilities, the Commission should focus on processes that will facilitate parties' abilities to work together to identify and redress the needs of individuals with disabilities. Indeed, the current experience with development of wireless hearing aid compatibility standards through the joint participation of service providers, manufacturers, and the user population outside of a rulemaking process demonstrates that significant achievements can be made absent specific regulatory directive.

In sum, BellSouth is supportive of the Commission sharing its expertise and resources with ATBCB to enable ATBCB to fulfill its statutory obligation. Beyond that, however,

⁸ See, H.R. Conf. Rep. No. 458, 104th Cong. 2d Sess. 135 ("Specifically, the conferees adopted subsections(a), (b), (c),(d) and (e) of new section 262 of the Communications Act, as added by the Senate bill.").

BellSouth urges the Commission to look to industry processes rather than regulatory requirements as the preferred means of achieving the goals and purposes of Section 255.

Respectfully submitted,

BELLSOUTH CORPORATION

Its Attorneys

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